prompted Professor Schofield, of the Northwestern University Faculty of Law, to consider in a recent article the constitutional validity of this form of taxation. *The State Tax on Illinois Central Gross Receipts and the Commerce Power of Congress*, 1 Ill. L. Rev. 440 (February, 1907).

To the question whether a state may constitutionally levy such a tax on gross receipts the United States Supreme Court has given seemingly contradictory answers. In 1873 it upheld the tax, in State Tax on Railway Gross Receipts.[1] In 1887, in Philadelphia, etc., Steamship Co. *v.* Pennsylvania,[2] it expressly disapproved the earlier case. And in 1891, in Maine *v.* Grand Trunk R. R. Co.,[3] it apparently returned in part to its original view, holding valid a tax ascertained by multiplying the railroad's average gross receipts per mile over its entire system by the number of miles within the taxing state. The ground taken by the five judges who constituted the majority, that the tax might be supported as an excise, seems unsound, as an interference with the commerce power of Congress. It may, however, be sustained on the theory that, if in lieu of the ordinary property tax and not in excess of it, it was in its essence a franchise tax based on the value of the property within the state.[4]

Professor Schofield, after stating the question at issue, proceeds: "Viewing it merely as a state law, laying a tax upon gross receipts, and including in the gross receipts those derived from transporting goods and passengers in the way of interstate commerce, the provision [in the Illinois Railroad's charter] is probably bad." This proposition is certainly sound if confined to assessments on gross receipts resulting from interstate transactions as such. But apparently Professor Schofield thinks it constitutionally impossible to devise a state rule for apportioning gross receipts of an interstate road when the haul begins or ends in the state, so as to subject even a part to the taxing power, on the ground that the price paid for an interstate haul is of necessity indivisible. This differs widely, he says, from a tax upon the property of the railroad, in which case the mileage rule of apportionment may be applied for the purpose of fixing the taxable value of the interstate property.

There is undoubtedly some distinction between the two species of taxation. The question is, should this change the result? The Grand Trunk case, while recognizing the distinction, seems to say it is one without a difference in any case where the gross receipts tax is apportioned, and is substituted for a property tax. It is true, that as the Illinois gross receipts tax was not a substitution, but an addition, and was not even apportioned, it does not come within the rule of the Grand Trunk case. Nevertheless the discussion of the subject, in making no reference to the latest utterance on the subject by the United States Supreme Court, is incomplete. The article relies mainly on a dissenting opinion of Mr. Justice Miller in the State Tax on Railway Gross Receipts case. While this is an almost prophetic enunciation of the present-day tendency to extend the power of Congress under the commerce clause, it is of little real authority today. It seems clear that Professor Schofield could have effectively shown the invalidity of the Illinois tax by relying on the Philadelphia Steamship case, which is overruled only in the situation where the tax in question is a substitution for a property tax and is apportioned on some just basis so as to separate as accurately as possible the proportion of gross receipts actually earned within the state.[5]

RATIFICATION OF AN UNAUTHORIZED CONTRACT OF INSURANCE AFTER THE OCCURRENCE OF LOSS. — Of the many unsettled problems in the law of ratification Mr. Frederick T. Case has selected one of the more difficult, and in a recent article has given it what is probably its first thoughtful treatment.

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[1] 15 Wall. (U. S.) 284.
[2] 122 U. S. 326.
[3] 142 U. S. 217.
[4] Postal Telegraph Cable Co. *v.* Adams, 155 U. S. 688; see, generally, 17 HARV. L. REV. 248, 261–263.
[5] See Cumberland, etc., R. R. Co. *v.* Maryland, 92 Md. 668.

A Question of Ratification in Insurance Law, 19 Green Bag 93 (February, 1907). If an agent without authorization effects insurance on property for the benefit of the owner, can such owner, if he first hears of the transaction after the loss has occurred, ratify the act and recover on the policy? Mr. Case answers in the negative.

From the standpoint of insurance law the question offers little difficulty. It is true that the quasi-agent has not what is commonly termed "an insurable interest." But the fact that he acted in expectation that the insured, who has an insurable interest, would ratify, must be enough to prevent the contract from being void; for otherwise ratification at any time would be useless, since it could not make a void contract valid.[1] As such a transaction is in no way wagering, it would seem not to come under the ban of the law.

But we are confronted with more difficult questions in the law of agency. The maxim that ratification is equivalent to an antecedent command leaves still unsettled when ratification will be permitted. If this subsequent assent with its fictitious relation back were allowed in our supposititious case, the principal could clearly recover. It is often stated, however, that a man cannot ratify a contract at a time when he cannot make it.[2] This principle would seem to support Mr. Case's answer, since a man cannot insure property after it has been destroyed.[3] Again, ratification with its fictitious relation is barred in general when it would work inequitable results.[4] To the argument for Mr. Case that it is inequitable to permit the insured to decide whether or not he will adopt the contract after his opportunity to consider the intervening circumstances, there is the answer that the insurer can recover from the quasi-agent in an action on implied warranty whatever he suffers by the insured's disaffirmance, and that a contrary holding would kill the doctrine of ratification, since this is the situation in every instance. Against him it is urged that since the insurer has received the premium, and since the contingency upon which he conditioned his liability has occurred, it is not inequitable to make him pay as he stipulated. But there is a fallacy in this. If the insured disaffirmed, inasmuch as the quasi-agent would have no ground upon which to recover the premium he paid,[5] the insurer could keep the money without risk of loss, and so refusing to allow the insured to ratify would not give the insurer an enrichment he otherwise would not have. It is suggested that the best theory on which to base the doctrine of ratification is that the assent of the third party at the time of the original transaction is considered as continuing until withdrawn, and this is met by the assent of the other contracting party when the principal later ratifies.[6] According to this, our problem must be answered in the negative, since the insurer's assent cannot be considered as continuing after the occurrence of the loss, for the contract can then no longer be made.

The text-writers lay down the law contrary to Mr. Case's view, and the language of the cases they commonly cite in accord supports them. But, as the writer points out, in all these cases the quasi-agent is part-owner or bailee of the property insured, or has some interest in it. He insists that this actually and logically distinguishes these cases from the problem he puts. The validity of this distinction is uncertain, but thanks are due to him for his exposition of the exact state of the authorities. Mr. Case cites, as in effect supporting his solution of the problem, several cases involving analogous situations, and his deductions from these seem logical.

ABUSE OF THE CORPORATION CHARTER, THE. *Don E. Mowry.* Analyzing the incorporation law of several states, and urging the necessity of a federal law to govern incorporation. 64 Cent. L. J. 49.

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[1] Milford Borough *v.* Water Co., 124 Pa. St. 610.
[2] Cook *v.* Tullis, 18 Wall. (U. S.) 332.
[3] Williams *v.* North China Ins. Co., 1 C. P. D. 757, 766, *per* Jessel, M. R.
[4] Pollock *v.* Cohen, 32 Oh. St. 514; see 9 HARV. L. REV. 60, 62.
[5] See Hagedorn *v.* Oliverson, 2 M. & S. 485; Story, Agency, § 248.
[6] See A Problem as to Ratification, by Prof. Eugene Wambaugh, 9 HARV. L. REV. 60.

ADMISSIBILITY, IN A CRIMINAL TRIAL, OF THE FORMER TESTIMONY OF A WITNESS, SINCE DEAD. *Walter R. Staples.* Contending that the rule should be uniform for civil and criminal actions, and that such evidence is admissible. 12 Va. L. Reg. 755. See 13 HARV. L. REV. 687.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS. *George A. Macdonald.* Discussing the present unsatisfactory status of deeds of assignment in England. 122 L. T. 238.

"COMMON LAW LIEN." *Anon.* Pointing out the inaccurate use of the word "lien" by English courts in so naming the right of auctioneers to retain the price until paid their fees. 26 L. N. (London) 18.

CONSTITUTIONAL ASPECTS OF EMPLOYERS' LIABILITY LEGISLATION. *Ernst Freund.* Criticizing the proposed Employers' Liability Act in Massachusetts as being too radical a step in the right direction. 19 Green Bag 80.

DEFENSE OF "FAIR COMMENT" IN ACTIONS FOR DEFAMATION, THE. *Francis R. Y. Radcliffe.* 23 L. Quar. Rev. 97. See 20 HARV. L. REV. 152.

EVIDENCE TO SHOW INTENT. *Ernest E. Williams.* 23 L. Quar. Rev. 28.

HOW TO STOP PERJURY IN OUR COURTS. *W. J. Gaynor.* Discussing the summary power conferred by statute in New York on trial judges to punish witnesses who seem to be guilty of perjury. 8 Bench and Bar 15.

INCIDENCE OF ESTATE DUTY IN REGARD TO PERSONALTY, THE. *W. Strachan.* Criticizing the English system of paying estate duty on personalty out of the residuary estate alone. 23 L. Quar. Rev. 88.

INTERSTATE COMMERCE CLAUSE AND STATE CONTROL OF FOREIGN CORPORATIONS. *Frank E. Robson.* Pointing out the present diversity in the state laws controlling foreign corporations. 5 Mich. L. Rev. 250.

JAPANESE CODE AND THE FAMILY, THE. *Munroe Smith.* 23 L. Quar. Rev. 42.

JUDICIAL DISPENSATION FROM CONGRESSIONAL STATUTES. *William Trickett.* Maintaining that the authority to pass on the constitutionality of statutes was not intended to be given to courts by the Constitution. 41 Am. L. Rev. 65.

LIABILITY FOR ACTS OF PUBLIC SERVANTS. *W. Harrison Moore.* Considering how far the shield of the crown should be extended to protect public officers in England from liability. 23 L. Quar. Rev. 12. *Cf.* 20 HARV. L. REV. 245.

MONROE DOCTRINE: ITS STATUS. *John F. Simmons.* 5 Mich. L. Rev. 236.

"MORTGAGE CHARGE" OF THE LAND TRANSFER ACTS, THE. *James Edward Hogg.* Giving a detailed study of the right embraced in the "charge," as distinguished from the common law mortgage. 23 L. Quar. Rev. 68.

PAR VALUE OF STOCK, THE. *Frederick Dwight.* Condemning the present system of fixing the par value of stock irrespective of the real value of the corporation's assets. 16 Yale L. J. 247.

POSSIBLE FEDERAL TRUST LEGISLATION. *Walter C. Noyes.* Pointing out that Congress can constitutionally regulate our producing trusts by treating them as instrumentalities of interstate commerce. 7 Colum. L. Rev. 93.

PRIVILEGED COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT. *W. C. Rodgers.* Collecting authorities. 64 Cent. L. J. 66.

PROPOSED SPECIAL JURY ACT, THE. *Howard O. Sprogle.* Briefly stating the purpose and operation of the proposed plan for a preliminary examination of veniremen by jury commissioners. 1 Ill. L. Rev. 446.

QUESTION OF RATIFICATION IN INSURANCE LAW, A. *Frederick T. Case.* 19 Green Bag 93. See *supra.*

REASONABLE CARE IN THE PAYMENT OF SAVINGS DEPOSITS AND CONSTRUCTION OF PROTECTIVE BY-LAWS. *Anon.* 24 Banking L. J. 49.

SCHOOLING RIGHTS UNDER OUR TREATY WITH JAPAN. *Simeon E. Baldwin.* 7 Colum. L. Rev. 85. See 20 HARV. L. REV. 337.

STATE TAX ON ILLINOIS CENTRAL GROSS RECEIPTS AND THE COMMERCE POWER OF CONGRESS. *Henry Schofield.* 1 Ill. L. Rev. 440. See *supra.*

STUDY OF ROMAN AND CIVIL LAW, THE. *William Wirt Howe.* 41 Am. L. Rev. 47.

II. BOOK REVIEWS.

FOUNDATIONS OF LEGAL LIABILITY. By Thomas Atkins Street. In three volumes. Northport, N. Y.: Edward Thompson Co. 1906. pp. xxix, 500; xviii, 559; xi, 572. 8vo.

The present work, in its main features, constitutes a general text-book on the subjects of tort and contract. As indicated by the title, however, the author